

No. 10497

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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B. H. PRENTICE,

Appellant,

vs.

L. BOTELER, Trustee in Bankruptcy of the Estate  
of DR. W. J. ROSS COMPANY, a Corpora-  
tion, Bankrupt,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED  
AUG 21 1933  
FALL R. O'BRIEN  
CLERK



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Central Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

B. H. PRENTICE, in pro per  
4705 Firestone Blvd.  
South Gate, Calif.

For Appellee:

CRAIG & WELLER  
THOMAS S. TOBIN  
817 Board of Trade Building  
111 West Seventh Street  
Los Angeles, Calif. [1\*]

In the District Court of the United States for the  
Southern District of California, Central Division

In Bankruptcy No. 40689-B

In the matter of

DR. W. J. ROSS CO.,  
a corporation,

Debtor.

ORIGINAL PETITION IN PROCEEDINGS  
UNDER CHAPTER XI

To the Honorable Judges of the District Court of  
the United States, for the Southern District of  
California, Central Division:

The petition of Dr. W. J. Ross Co., a corporation, having its principal place of business at Los Alamitos, in the County of Orange, State of California, engaged in the business of manufacture and sale of dog food, soap, fertilizer, and in the rendering and sale of tallow, respectfully represents:

I.

Your petitioner has had its principal place of business in the City of Los Alamitos, Orange County, California, within the above jurisdictional district for a period of more than eight years last preceeding the filing of this petition, and in this jurisdictional district for more than eighteen years.

II.

No bankruptcy proceeding initiated by a petition by or against your petitioner is pending.

## III.

Your petitioner is unable to pay its debts as they mature and proposes the following arrangement with its unsecured debtors:

1. Debtor to remain in possession of the assets and to operate the business of the debtor, subject to supervision of the Court, pending the confirmation of the arrangement hereinafter [2] proposed, or until further order of the Court.

2. The debtor shall conduct the business in such a manner as will accomplish the best results for all interested parties;

3. Principal assets of this debtor consist of material and supplies, machinery, tools and equipment for the purpose of manufacturing prepared dog food, soap, fertilizer, and other products of a kindred nature. In addition thereto the debtor is possessed of four certain boats equipped and suitable for the purpose of taking and rendering of various kinds of fish, including whale and shark. That said boats are of the reasonable value of Forty-five Thousand (\$45,000.00) Dollars, or more. That one of said boats, commonly known as the Lottie Bennett, is subject to wharf, dock and repair charges of approximately Twelve Thousand (\$12,000.00) Dollars. In addition thereto the debtor has a valuable lease on the premises occupied by it and upon which it has installed various and sundry machinery, tools and equipment.

That the liabilities are approximately as follows:

Accounts payable Sixty Thousand (\$60,000.00) Dollars; notes and contracts payable, Seven Thou-

sand Eight Hundred Seventy Dollars and Eighty-three Cents (\$7,870.83); payroll and taxes approximately \$2,858.41.

Your petitioner has a very valuable good will; which is capable of producing in excess of Three Hundred Fifty Thousand (\$350,000.00) Dollars, or more, gross business during any one year. That by reason of certain unforeseen catastrophies, and more especially by reason of the economic conditions existing for a period of several months, and the uncertain conditions now in force and effect as a result of war conditions, and effecting businesses such as is operated by the petitioner, the business of your petitioner has suffered greatly with the result that it has been unable to pay its debts as they mature. Your petitioner feels that if a reasonable extension is granted to it by its creditors, all of its [3] creditors will eventually be paid in full and the petitioner will maintain its valuable good will and preserve the interest and investment of its stockholders.

That your petitioner proposes that the business of the debtor be operated by the debtor and under the supervision of a receiver and a creditors committee and that from the gross proceeds the debtor's obligations be paid in the following order of priority:

(a) The necessary expenses in the operation of the business;

(b) The actual necessary costs of administration of the debtor estate as fixed by the Court, in-

cluding the fees of the attorney for the debtor, the fees of the receiver and disbursing agent, the fees of any counsel who will be engaged by the receiver, and the necessary amount to be expended for filing and indemnity fees;

(c) All claims and taxes entitled to priority pursuant to the provisions of Section 64(a) 4 of the Bankruptcy Act; and

(d) The claims of general unsecured creditors.

It is proposed under the above plan to pay all of the general unsecured creditors in full over a period of twenty-four months with the understanding that creditors will receive not less than 5% (five percent) per month on their claims, the first payment to commence four months after the confirmation of the plan. It is further proposed that upon the confirmation of the plan fresh operating capital in such amounts as may be necessary will be put into the business in order to maintain it.

4. That it is contemplated that the Court will retain jurisdiction for all purposes until the arrangement has been fully carried out as herein above set forth.

5. Upon the completion of the entire arrangement and the satisfaction of all creditors these proceedings shall thereupon be terminated and the debtor shall then be entitled to manage its affairs.

[4]

#### IV.

That your petitioner is unable to file its Schedules "A" and "B" at this time as set forth in the affi-

davit filed herewith praying for ten days time in which to file its Schedules "A" and "B" and your petitioner upon the granting of the relief prayed for therein will file its Schedules "A" and "B" within the time allowed by the Court.

#### V.

The statement attached hereto, marked "Exhibit A", and verified by your petitioner's oath, contains a full and true statement of all its executory contracts as required by the provisions of the Bankruptcy Act.

#### VI.

That attached hereto and marked Exhibit "B", verified by your petitioner's oath, is a list of creditors of the debtor which said list is, however, subject to amendment in the schedules hereinafter to be filed.

#### VII.

That attached hereto and made a part hereof, and marked Exhibit "C", is a resolution of the Board of Directors of the debtor corporation authorizing the filing of these proceedings.

Wherefore your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of Chapter XI of the Act of Congress relating to bankruptcy, and that a receiver be appointed to act as a custodian of the assets of the debtor corporation pending the confirmation of this arrangement and for the purpose of supervis-

ing the operation of the business by the debtor corporation.

[Seal]

DR. W. J. ROSS CO.,

a corporation

By DR. W. J. ROSS

President

CHARLES H. VEALE

Attorney for Petitioner [5]

(Duly Verified May 21, 1942, by W. J. Ross.)

[Endorsed]: Filed May 23, 1942. [6]

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[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND  
ORDER OF REFERENCE UNDER SEC-  
TION 322 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on May 23, 1942, before the said Court the petition of Dr. W. J. Ross Co., a corporation, that it desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Ben E. Tarver, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Dr. W. J. Ross Co., a corporation shall attend before said referee on June 1, 1942,



and at such times as said referee shall designate, at his office in Santa Ana, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Paul J. McCormick, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on May 23, 1942.

[Seal] R. S. ZIMMERMAN, Clerk

By E. M. ENSTROM, JR.

Deputy Clerk

[Endorsed]: Filed June 17, 1942. [8]

[Title of District Court and Cause.]

Schedule B. Statement of All Property of Bankrupt

Schedule B-1.

Real Estate

Location and Description of all Real Estate owned by Debtor, or held by him, whether under deed, lease or contract. — Incumbrances, thereon, if any, and dates thereof.—Statement of particulars relating thereto.	Estimated value of Debtor's Interest Dollars Cents
3.75 acres, more or less, of land situated on Firestone Boulevard in the City of Southgate.... (Subject to encumbrance of \$1,500.00 representing balance of purchase price)	\$ 5,734.09
Total	\$ 5,734.09

-----  
DR. W. J. ROSS, Petitioner

[Endorsed]: Filed June 17, 1942. [9]



[Title of District Court and Cause.]

## ORDER OF ADJUDICATION

At Santa Ana, in said District, on June 17, 1942;

The said Bankrupt having filed, on the 23rd day of May, 1942, its Original Petition in Proceedings under Sec. 322 of Chapter XI of the Bankruptcy Act, setting forth, among other things, that it was unable to pay its debts as they mature, and praying that proceedings might be had upon said Petition in accordance with the provisions of Chapter XI of the Bankruptcy Act relating to bankruptcy, and the Honorable Paul J. McCormick, a Judge of the above entitled Court in and for the Southern District of California, having made and filed his Order on the 23rd day of May, 1942, approving said petition and referring said bankruptcy matter to the undersigned Referee, etc., and to take such further proceedings therein as required by said Act; and

Said Bankrupt having on the 17th day of June, 1942, filed herein its withdrawal of plan of arrangement and its consent to adjudication, and admitting in writing its inability to pay its debts and its willingness to be adjudged a bankrupt; and

Said Petition and said withdrawal of plan of arrangement and consent to be adjudicated a bankrupt having been heard and duly considered, and, there being no objection thereto,

It Is Adjudged that the said Dr. W. J. Ross Co., a corporation, the said petitioner, is a bankrupt under the Act of Congress relating to bankruptcy, and hereby direct that bankruptcy herein be proceeded with pursuant to the provisions of said Act.

Dated: June 17, 1942.

BEN E. TARVER

Referee in Bankruptcy.

[Endorsed]: Filed June 20, 1942. [11]

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[Title of District Court and Cause.]

BOND OF TRUSTEE

Know all Men by these Presents,  
That we L. Boteler of Los Angeles, California, as Principal and the Saint Paul-Mercury Indemnity Company of Saint Paul, a corporation duly incorporated under the laws of the State of Delaware, and authorized to act as surety under the Act of Congress approved August 13, 1894, whose principal office is located in Saint Paul, State of Minnesota, as Surety, are held and firmly bound unto the United States of America in the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Signed and Sealed this 7th day of July A. D. 1942.

The Condition of This Obligation Is Such, That whereas the above named L. Boteler was, on the 6th day of July A. D. 1942, appointed Trustee in the case pending in bankruptcy in the said Court,

wherein Dr. W. J. Ross Company, a corporation is the Bankrupt, and he, the said L. Boteler has accepted said trust with all the duties and obligations pertaining thereto.

Now, Therefore, if the said L. Boteler, Trustee as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of the estate of the said Bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said Trustee, then this obligation to be void; otherwise to remain in full force and virtue.

Signature Illegible (Seal)

Signed, sealed and delivered in the presence of

-----

Examined and recommended for approval as provided in Rule 28.

SAINT PAUL - MERCURY  
INDEMNITY COMPANY OF  
SAINT PAUL

By ARTHUR D. BOND

Its Attorney-in-fact.

FRANK C. WELLER

Attorneys.

Approved this 8th day of July A. D. 1942.

BEN E. TARVER

District Judge

## Acknowledgement of Attorney-in-Fact.

State of California.

County of Los Angeles—ss.:

On this 7th day of July 1942, before me, a Notary Public, within and for the said County and State, personally appeared Arthur D. Bond, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of and for the Saint Paul-Mercury Indemnity Company, Saint Paul, Minnesota, a corporation created, organized and existing under and by virtue of the laws of the State of Delaware, and acknowledged to me that he subscribed the name of the Saint Paul-Mercury Indemnity Company thereto as Surety, and his own name as Attorney-in-Fact.

PAUL W. ROSTER JR.

Notary Public.

My Commission Expires July 26, 1945.

[Endorsed]: Filed July 9, 1942. [13]

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[Title of District Court and Cause.]

## REFEREE'S CERTIFICATE ON REVIEW

To the Hon. C. E. Beaumont, District Judge:

I, Ben E. Tarver, Referee in Bankruptcy, in charge of this proceeding, do hereby certify:

That in the course of such proceedings, an Order Confirming a Sale of real property, a copy of which is annexed to the petition hereinafter referred to, was made and entered on the 16th day of March, 1943:

That on the 29th day of March, 1943, Burr H. Prentice, doing business under the fictitious name of "Smileage Company, Ltd.", a would-be purchaser or bidder for said real property in such proceeding, feeling aggrieved thereat, filed a petition for a review, which was granted;

That the error complained of by the petitioner is that petitioner claims to be the highest bidder for the property described in said order confirming sale of real property first hereinabove referred to, at the time when said return of sale by the Trustee to the Baruch Corporation was before the Referee for confirmation, and that the Referee erred in not accepting his bid of \$2325.00 and confirming the sale to him for said amount.

That a summary of the evidence on which such Order was based is as follows:

That at the hour of 10 o'clock on the 10th day of March, 1943 the hereinafter Referee called for hearing the petition of the Trustee to hear said Return of Sale of said property, and that there were present the following persons: Mr. Baruch, representing the successful bidder, to-wit: The Baruch Corporation; Mr. Burr H. Prentice and Mr. Clemens, representing the Smileage Company, Ltd.;

That at said time and place the Referee announced that he had before him for attention the Trustee's Return of Sale of a parcel of land for \$2250.00 and his Petition for its confirmation; that he would not take the time or trouble to [15] read the Return of Sale and Petition in full, unless requested so to do by someone then and there pres-

ent, but would merely read the description of the property, or enough of it to identify it as the parcel of land that was up for confirmation or sale. There being no request for the reading of the whole Return of Sale and Petition for Confirmation, the Referee merely read the description of the land before him for sale, and after doing so one of the men from the Smileage Company, Ltd. said that was the same property; whereupon the Referee asked for higher bids on the property set forth in the Return of Sale, but said that he would not consider any bid that was not at least 10% higher than the \$2250.00 bid by the purchaser named in the Return of Sale;

That while the Referee asked for higher bids, as stated, he did not announce or state that he would sell the property at auction or that he would auction the sale; whereupon the person present who said he represented the Smileage Company, Ltd., said he would bid \$2300.00 for that company, and a little later he raised it to \$2325.00 and tendered a so-called check or company voucher for more than 10% of said last mentioned sum, to-wit: \$233.00. The Referee did not retain said document herein referred to as a check or voucher, and did not clearly determine its character as it was so crudely made out, and when he asked the bidder if he wanted to leave it with the Referee, he said "No" and accepted it back again;

That when the Referee asked him if it was a certified check he said "No. Would you accept it if it was?" The Referee replied that he would not un-



less it was at least 10% greater in amount than the \$2250.00 bid by the purchaser named in said Return of Sale.

That the said sum of \$2325.00 bid on behalf of said Smileage Company, Ltd. was the highest sum there bid.

Mr. Prentice, the petitioner, at about this stage of the proceedings, said there was nothing in the Bankruptcy Act that provided that the Referee should not accept any bid that was not an amount at least 10% greater than the amount bid by the purchaser in the Return of Sale. The Referee replied that neither did he understand there was any such provision in the Bankruptcy Act, but, notwithstanding, he thought it was manifestly unfair to have a purchaser at a [16] private sale bind himself in writing to pay \$2250.00 for a parcel of land and then when the sale was up for confirmation before the Referee, for the Referee to accept a bid less than an increase of 10%.

At some stage of the proceedings the Referee, in the presence of those present as hereinbefore stated, rang up Mr. L. Boteler, the Trustee, in Los Angeles, and said to him that he, the Referee, was rejecting bids of \$2300.00 and \$2325.00 for the property in question as they were not in an amount 10% greater than the price set forth in the Return of Sale as being bid by the purchaser named therein—the Baruch Corporation, and that he did not think that any sum less than that should be accepted, and asked the Trustee if he had any different idea. The Trustee replied that he had not and agreed with

the Referee, and whereupon the Referee turned to those present and said he would stand by his ruling and refuse to accept the said bid of \$2325.00 and that he would confirm the sale *fo* the Baruch Corporation for \$2250.00, unless a bid was made that was 10% higher than that sum.

That the Referee does not subscribe to the Los Angeles Daily Journal, in which the Trustee advertised, placing therein an ad stating that bids would be received for said property at the office of the undersigned Referee, on March 10, at the hour of 10 o'clock a.m. and did not have before him a copy of said ad; that while he had hastily read the ad in a copy of the said Journal in the Orange County Law Library at the Court House in Santa Ana, he did not remember all of the terms thereof, but he did not understand from said ad in said Journal that the said sale to be held before the Referee was an ordinary auction for the property in question. That he did not request said ad to be published, and had not read it before it was published, nor had he ordered any publication of said sale.

The Referee's recollection is that he also called Mr. Boteler, the Trustee, over the phone and asked him about the title, etc. and whether or not a certificate of title would be given, and about the taxes, and that the Referee having already announced that the property would be sold free and clear of incumbrances, thereupon confirmed the sale of said real property to the Baruch Corporation.

That no full stenographic report was taken or kept, either by the Referee or his Clerk, of every-



thing done at the time said Return of Sale was up for [17] confirmation but the above is the substance of what was said and done at said time, to the best of the recollection of the undersigned Referee; that his Clerk kept notes for the Record Book, a copy of which will be found among the papers sent up to the Court for its information;

That the said Order Confirming the Sale of the real property in question was entered on the 16th day of March, 1943 and at the same time was signed, filed and stamped with the appropriate filing mark in the office of the Referee; that on the 29th day of March, 1943, and not before, the Referee received through the United States postoffice at Santa Ana, and signed for as registered mail, the Petition to Review above mentioned, in an envelope marked at Los Angeles postoffice, as there received, on the 26th day of March, 1943, and post marked by the postoffice at Santa Ana as having been received on the 27th of March, 1943. Said envelope is included in the records of this review and referred to herein as in the hereinafter numbered paragraph 5.

That the Referee was informed by the Clerk at the Registry window at the postoffice at Santa Ana that the envelope enclosing said Petition for Review was received at the Santa Ana postoffice at 9 o'clock A. M. of March 27, 1943, and although addressed to the undersigned Referee at his office in the Otis Building, the notice of the arrival of said Petition for Review was placed in the postoffice box of the Referee.

I desire to add to the statement of what took place: That Mr. Baruch, who was present and represented the purchaser named in the Return of Sale, stated that he had spent \$75.00 for surveying the property in question, on the faith of having his purchase confirmed, and also that he had spent other amounts making a total of about \$125.00.

That a young lady representative of Mr. Prentice, the petitioner, was in the Referee's office on the 16th day of March and spent several hours in copying the record of the proceedings of the sale and the confirmation thereof, of the property in question, to the Baruch Corporation, the bidder or purchaser named in said Return of Sale, and my clerk, at her request, laid before her all of the orders and papers filed in and about the sale of this property to the Baruch Corporation; that said Order Confirming Sale then bore the filing marks of the [18] Referee's office, showing that it was filed on the 16th day of March, 1943 in that office; that five or six days later Mr. Prentice, the petitioner, himself was in the Referee's office and spent about an hour copying some of the record in regard to said sale and confirmation, at which time he was presented with the record, including said Order Confirming the Sale to the Baruch Corporation.

That the question presented in this review is: Did the Referee herein err in refusing to accept a bid for the real property described in said Return of Sale for a sum that was not at least 10% greater than the sum of \$2250.00, the sum set forth in said Return of Sale as the amount bid by the purchaser

named therein, and in the absence of a higher bid than the sum of \$2325.00, in confirming the sale set forth in said Return of Sale?

I hand you up herewith, for the information of the Judge, copies of the following papers:

1. The Record Book or minutes of the proceedings;

2. The original Petition on which the certificate is granted, with a copy of the Order Confirming the Sale to Baruch Corporation for \$2250.00 attached thereto;

3. The Order authorizing the Trustee to sell the property;

4. The Return of Sale and Petition for its Confirmation;

5. The original envelope in which the Petition for Review was mailed by the petitioner at Los Angeles to the Referee at Santa Ana, with the Referee's notation made thereon at the time it was received, bearing the Los Angeles post marks of the date it was deposited in the postoffice in that city and the date when the said petition was received at the Santa Ana postoffice;

6. Original Points and Authorities of Petitioner to Review Order, accompanying said Petition.

Dated: April 13, 1943.

Respectfully submitted,

BEN E. TARVER

Referee in Bankruptcy.

[Endorsed]: Filed Apr. 15, 1943. [19]

[Title of District Court and Cause.]

## ORDER OF SALE OF REAL PROPERTY

The Trustee herein, L. Boteler, having filed his petition for authority to sell the hereinafter described real estate and the same coming on for hearing this 20th day of July, 1942 after due notice to creditors as required by law, and said petition having been heard and duly considered, on motion of Craig & Weller, counsel for said Trustee, no adverse interests appearing thereat,

It Is Ordered That the Trustee herein be, and he is hereby authorized and directed to sell, at private sale or at public auction, to the highest and best bidder or bidders therefor, the real property described in said petition, situated in the City of Southgate, County of Los Angeles, State of California, as follows:

That part of Lot "A" of Tract No. 486 as per Map recorded in Book 15 pages 30 and 31 of Maps in the Office of the County Recorder described as follows:

Beginning at the Northeasterly corner of said Lot "A" thence north  $82^{\circ} 45'$  west along the northerly line of said Lot, 263.63 feet to the northeasterly corner of the land described in the deed to Southern California Edison Company, recorded in Book 8429 page 270 of Official Records of said County; thence south  $34^{\circ} 46' 40''$  west along the southeasterly line of the land described in said deed [20] 717.7 feet, more or less, to a point in the southerly line of said

Lot "A"; thence south 82° 34' 40" east along said southerly line 247.08 feet to the southeasterly corner of said Lot "A" thence northerly along the southeasterly line of said lot to the point of beginning. Except that portion thereof, if any, now included within the boundaries of Andrews & Massachia Land in Ranchio Santa Gertrudes as per map recorded in Book 12 pages 138 and 139 of maps in the office of the County Recorder.

Subject to a deed of trust dated October 1, 1940, wherein Title Guarantee & Trust Company, a California corporation, is Trustee and Lydia Bushell, a married woman, is beneficiary.

any sale of said real property is to be made subject to the confirmation of this Court.

Dated: July 20th, 1942

(Signed) BEN E. TARVER

[Endorsed]: Filed Apr. 15, 1943. [21]

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[Title of District Court and Cause.]

## RETURN OF SALE OF REAL PROPERTY

The Trustee herein, L. Boteler, respectfully represents to this Court that under and pursuant to an Order of Sale heretofore made and entered herein, he has sold to the Baruch Corporation, a California Corporation, for the sum of \$2250.00 lawful money of the United States, the following described real property belonging to this estate, to-wit:

That part of Lot "A" of Tract No. 486 in the City of Southgate, County of Los Angeles, State of California, as per Map recorded in Book 15, pages 30 and 31 of Maps in the Office of the County Recorder of said county, described as follows:

Beginning at the Northeasterly corner of said Lot "A" thence north  $82^{\circ} 45'$  West along the Northerly line of said Lot, 263.63 feet to the Northeasterly corner of the land described in the deed to Southern California Edison Company, recorded in Book 8429, Page 270 of Official Records of said County; thence South  $34^{\circ} 46' 40''$  West along the Southeasterly line of the land described in said deed 717.7 feet, more or less, to a point in the Southerly line of said Lot "A"; thence South  $82^{\circ} 34' 40''$  East along said Southerly line 247.08 feet to the Southeasterly corner of the said Lot "A", thence Northerly along the Southeasterly line of said Lot to the point of beginning. Except that portion thereof, if any, now included within the boundaries of Andrews & Mussachia Land in Ranchio Santa Gertrudes as per map recorded in Book 12, Pages 138 and 139 of maps in the office of the County Recorder or said county. And subject to a right of way for main San Antonio Ditch crossing said land also a right of way for irrigation ditch along the north line of the property herein described from the main ditch to Perry Road, as reserved in deed recorded in Book 2832 Page 57 of Deeds. [22]



That said purchaser has deposited its check with your Trustee in the sum of \$225.00 as evidence of good faith, the balance of the purchase price to be paid in full after confirmation of sale by this Court and upon completion of escrow with the Title Insurance & Trust Company.

Your Trustee respectfully represents that said purchaser was the highest and best bidder for said property; that said sum is the highest and best bid received therefor and that the same constitutes the full value of the right, title and interest in this estate in and to said property, and your petitioner herein believes that it is to the best interest of this estate that said sale be confirmed.

Wherefore your Trustee prays that a meeting of creditors be called and that a hearing in connection therewith be had in open Court as soon as may be on this Return of Sale, and that a ten-day notice thereof be sent to creditors forthwith, and this Court's order be thereupon made and entered herein, if no objections are then made thereto, approving and confirming the sale hereinabove described, and that your Trustee be authorized and directed to deliver over said property to said purchaser upon receipt of the purchase price therefor.

(signed)            L. BOTELER  
Trustee

State of California  
County of Los Angeles—ss.

L. Boteler being by me first duly sworn, deposes

and says: that he is the Trustee in the above entitled action; that he has heard read the foregoing Return of Sale of Real Property and knows the contents thereof; and that the same is true of his own knowledge, except the matters which are herein stated upon information or belief, and as to those matters that he believes it to be true.

(signed) L. BOTELER

Subscribed and Sworn to before me [23] this  
25 day of February A. D. 1943

[Seal] (Signed) M. M. JENKS

Notary Public in and for the County of Los Angeles,  
State of California

[Endorsed]: Filed Apr. 15, 1943. [24]

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[Title of District Court and Cause.]

### REFEREE'S RECORD OF PROCEEDINGS

3-10 at 10 A. M. held sale of real property, lot on Manchester Ave. Mr. Baruch, of the Baruch Corporation, who had bid \$2250.00 for the lot, was present; also B. H. Prentice and Mr. Clemens, representing The Smileage Co., Ltd. who raised the bid to \$2300.00 for the Company and later made a personal bid of \$2325.00, and tendered a check, or Company voucher, for \$233.00, as a deposit, which the Referee did not accept as he insisted that the former bid be increased by 10%, The Referee confirmed the sale to the Baruch Corporation. The meeting adjourned.



3-16. Filed Order Confirming Sale of Real Property

[Endorsed]: Filed Apr. 15, 1943 [25]

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[Title of District Court and Cause.]

PETITION TO REVIEW REFEREE'S ORDER

To Ben E. Tarber, Esq. Referee in Bankruptcy

Your petitioner respectfully states that he is operating under a fictitious name, to wit "Smileage Company". That he has *heretofor* complied with section 2466 and 2468 of the C.C.P. State of California.

Furthermore your petitioner respectfully shows:

That on the 10th day of March, 1943, at the hour of 10:00 A. M. he was present in the court room of the Hon. Ben E. Tarber, Referee in Bankruptcy in the City of Santa Ana, California.

That in the course of the proceeding before the Honorable Court at the said time and place an order, a copy of which is hereto attached, marked Exhibit "A", was made and entered in the above entitled cause.

That such order was erroneous in that it denied to your petitioner, as the highest bidder, his right to purchase that certain real property more fully described in "Exhibit A" hereto attached.

*Wherefor*, your petitioner, feeling aggrieved, because of such order, prays that the same may be reviewed, as provided in the Bankruptcy Act of

1898 and the amendments thereto, and the general orders of the Court.

Dated March 25, 1943

BURR H. PRENTICE

Petitioner [26]

[Endorsed]: Filed 3-29-43.

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EXHIBIT "A"

In the District Court of the United States, Southern  
District of California, Central Division

In Bankruptcy No. 40689B

In the Matter of

DR. W. J. ROSS CO., a Corporation,  
Bankrupt

ORDER CONFIRMING SALE OF REAL  
PROPERTY

The trustee in bankruptcy herein, L. Boteler, having heretofore filed his petition for an order authorizing him to sell certain real property belonging to this bankrupt estate, as hereinafter described at private sale or at public auction as the trustee deemed suited to obtain the highest and best bid *therefor*, and a meeting of creditors of the above bankrupt having been called before the undersigned Referee in Bankruptcy at his Court Room in the City of Santa Ana, County of Orange, State of California, on the 20th day of July, 1942, of which said meeting all the creditors of the above named bankrupt were given more than ten days notice as required by law, and there being no objec-

tion to the granting of said petition, and the Referee having made and entered his order of sale of real property, and after the conclusion of said meeting, authorizing and directing the trustee to sell at private sale or public auction, to the highest and best bidders *therefor*, the real property hereinafter described, and the trustee having endeavored to dispose of said real property subsequent to the entry of said order, and having finally negotiated a private sale to the Baruch Corporation, a California corporation, for the sum of \$2250.00, lawful money of the United States, and having accepted a deposit in the sum of \$225.00 as evidence of good faith on the part of the purchaser, subject to confirmation of the sale by this Court, and upon completion of the escrow with the Title Insurance and Trust Company, and after which the balance of the purchase price was to be paid, and the trustee having made his return of sale to the undersigned Referee in Bankruptcy, in writing, recommending confirmation thereof, and having reported [27] to the Court in said return of sale that said purchase price constituted the full value of the right, title and interest of the bankrupt estate in and to said real property, and said return having duly come on for confirmation before the undersigned Referee in Bankruptcy on March 10, 1943, at the hour of 10 o'clock, A. M., on said date, and there having appeared at said hearing on confirmation thereof, one Prentice who made an offer to raise the purchase price reported by the trustee, in the sum of \$50.00, tendering a check on a San

Diego Bank, and the Referee having asked the trustee for his recommendations with regard to said \$50.00 additional offer, and the trustee having recommended that any additional offers made at the time of confirmation of said sale should be at least ten per centum of the agreed sale price which had been submitted for confirmation, and the said Prentice having declined in open court to advance said proffered bid to ten per centum above the purchase price reported by the trustee, and the Referee feeling that it would be unjust and inequitable to the purchaser who had negotiated with the trustee to purchase said real property at a full and fair purchase price, to permit a bidder to raise the bid for an inadequate amount at the time of the confirmation of said sale, and the Referee having considered said matter, and being fully advised in the premises,

Finds that the purchase price of \$2250.00 negotiated by the trustee with the Baruch Corporation, a California corporation, is a fair purchase price offered and accepted in good faith, and should be confirmed, and that any further bids or offers made at the time of the confirmation thereof in a sum less than ten per centum above said purchase price of \$2250.00, should be rejected.

In Consideration of the foregoing, and on motion of Messrs. Craig & Weller, attorneys for the Trustee, Thomas S. Tobin of counsel, it is

Ordered that the sale of real property belonging to this bankrupt estate and situated in the City

of South Gate, County of Los Angeles, State of California, described as:

That part of Lot "A" of Tract No. 486 as per Map recorded in Book 15, pages 30 and 31 of Maps in the Office of the [28] County Recorder, described as follows:

Beginning at the Northeasterly corner of said Lot "A" thence north  $82^{\circ} 45'$  West along the Northerly line of said Lot, 263.63 feet to the Northeasterly corner of the land described in the deed to Southern California Edison Company, recorded in Book 8429, page 270 of Official Records of said County; thence South  $34^{\circ} 46' 40''$  West along the Southeasterly line of the land described in said deed 717.7 feet, more or less, to a point in the Southerly line of said Lot "A"; thence South  $82^{\circ} 34' 40''$  East along said Southerly line 247.08 feet to the Southeasterly corner of said lot "A", thence Northerly along the Southeasterly line of said Lot to the point of beginning. Except that portion thereof, if any, now included within the boundaries of Andrews & Massachia Land in Ranchio Santa Gertrudes as per map recorded in Book 12, Pages 138 and 139 of maps in the office of the County Recorder.

Subject to a Deed of Trust dated October 1, 1940, wherein Title Guarantee and Trust Company, a California corporation, is Trustee and Lydia Bushnell, a married woman, is beneficiary.

made by the trustee herein to the Baruch Corporation, a California corporation, for the sum of \$2250.00, lawful money of the United States and returned to this court, be, and the same hereby is confirmed.

It Is Further Ordered that the trustee be, and he hereby is authorized to complete said sale.

Done at Santa Ana, in the Southern District of California this 16th day of March, 1943.

BEN E. TARVER

Refere in Bankruptcy

Filed 3/16/43 [29]

### AFFIDAVIT OF MAILING

State of California

County of Los Angeles—ss.

M. Quinn, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles, that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's residence address is 9212 Hunt Street, South Gate, California. That on the 26th day of March, A. D. 1943, affiant served the within Petition to Review Referee's Order on the following interested parties in said action by placing a true copy thereof in envelopes addressed to

Craig & Weller, Thomas S. Tobin, Attorneys for L. Boteler, Trustee, at their business address at 817 Board of Trade Building, 111 West Seventh Street, Los Angeles, California, and



Julius Mackson, Counsel for Baruch Co., at the business address 'Commercial Exchange Building, 416 W. Eighth Street, Los Angeles, and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the places so addressed and/or there is a regular communication by mail between the place of mailing and the places so addressed.

M. QUINN

Subscribed and Sworn to Before Me This 26th day of March, 1943.

N. FISHER

Notary Public in and for the County of Los Angeles,  
State of California.

My Commission Expires Sept. 11th 1946

[Endorsed]: Filed Apr. 15, 1943. [30]



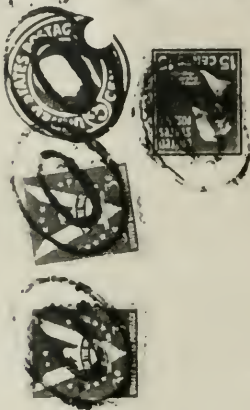




REGISTERED

354146

Ben E. Warner, Esq.  
Referee in Bankruptcy  
Ctis Building  
Santa Ana, California



#5-

7. 6<sup>-1</sup>/<sub>2</sub>

[illegible]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT  
OF PETITION TO REVIEW ORDER CON-  
FIRMING SALE OF REAL PROPERTY

After reviewing the file in the above entitled cause there appears to be some disagreement as to the facts.

The Order Confirming Sale of Real Property recites that petitioner made an offer to raise the bid of Baruch Co. in the sum of Fifty (\$50.00) Dollars. (Pg. 2, Line 7, Order Confirming Sale of Real Property). Contradicting this is the statement as set forth in "Referee's Record of Proceedings":

"——Mr. Baruch of the Baruch Corporation, who had bid \$2250.00 for the lot, was present; also B. H. Prentice and Mr. Clemens, representing the Smileage Co., Ltd., who raised the bid to \$2300.00 for the Company and later made a personal bid of \$2325.00, and tendered a check, or Company voucher, for \$233.00 as a deposit" *ect.* Pg. 1, Lines 10-15, Referee's Record of Proceedings).

This constitutes a raise of Seventy-Five (\$75.00) Dollars over the bid of Baruch Co., which bid was accepted as being "the highest and best bid received therefor" (Pg. 2, Lines 7-8, Trustee's Return of Sale of Real Property).

In connection with this bid of Two Thousand Three Hundred Twenty Five (\$2325.00) Dollars, petitioner tendered a check in the amount of Two Hundred Thirty-three (\$233.00) being ten per cent

of his bid and even went so far as to offer a cash deposit if the Court felt there was any question of the sufficiency of the check tendered. This is the check which the Court returned to petitioner after declining to accept the increased bid.

The sale of the property described in the Order Confirming Sale, if a [33] sale was in fact held, was not fairly and impartially conducted. Being the highest bidder for the property in open court, petitioner was discriminated against without justification and if the order under review is allowed to stand it will constitute an arbitrary abuse of discretion upon the Referee's part.

"The high bidders, however, have a standing which permits them to appear and urge the acceptance of their bids and the confirmation of the sale. They were brought to the sale by the confirmation of the Court, and having done what the Court asked them to do, they now have a right to ask the Court to approve their acts".

Jacobson vs. Larkey 245 Fed. 541.

"Acceptance of lesser of two comparable bids for property offered for sale by Trustee in Bankruptcy is an abuse of discretion calling for revision". Kimmel v Crocker 72 Fed. (2nd) 599 (Syllabus).

"It would clearly be an abuse of discretion to accept the lesser of two comparable bids". Kimmel v Crocker Supra.

In the case of Jacobson v Larkey (Supra) the Court denied a motion to set aside a sale made

to the high bidder wherein the only grounds put forward by the petitioner therein was that if the property were again offered for sale a higher price would be bid for it. This is a different situation than is presented in the present petition wherein this petitioner was the highest bidder at the sale. However, the Court's remarks are so pertinent that we quote:

“After much experience in scrutinizing bidding at judicial sales, courts now uniformly hold that the mere offer to pay more than the price bid is not a substantial ground for setting aside a sale, recognizing that nothing will more certainly tend to discourage and prevent bidding than a judicial determination that the highest bidder may be deprived of the advantage of his accepted bid by an offer of another person subsequently made to bid higher at resale”.

There was no showing, nor is there any evidence or other circumstance [34] before the Referee or the Trustee, which would indicate that petitioner was not qualified in all respects as a bidder for the property and perfectly able to fully comply with the terms of the proposed sale and to consummate the purchase of the property. The only excuse why petitioner's higher bid was not accepted according to the record is that the “trustee recommended” that no raise or increase over the amount which he had been privately offered (\$2250.00) would be entertained unless the higher offer was at least in a sum equal to ten percent more than the private bid. (Pg. 2, Lines 10-12, Order Con-

firming Sale of Real Property, and Pg. 1, Line 16, Referee's Record of Proceedings.)

We fail to find any authority in the Bankruptcy Act itself, or in the rules of the court relating to sales of bankrupt property, justifying a recommendation by anyone to the effect that a bid shall not be considered unless it is an increase of ten percent over the amount previously offered. Neither is there authority which would bar an increased bid if it is not in such an increased sum.

The advance bid of petitioner being Seventy Five (\$75.00) Dollars more than the bid of Baruch Corporation represented a clear profit to the Bankrupt Estate of just Seventy Five (\$75.00) Dollars. For the Trustee or the Referee to insist on an upset bid of Two Thousand Four Hundred Seventy Five (\$2475.00) Dollars was unjust and erroneous. To do so was to permit the Baruch Co. to take the property for Two Thousand Two Hundred Fifty (\$2250.00) Dollars while this petitioner would have to pay Two Thousand Four Hundred Seventy Five (\$2475.00) Dollars for the same property.

Such a proposition is manifestly so unfair that it should not be necessary that petitioner cite any authorities on the point. However, the following citation is so apt to this present situation that it is quoted:

“When the property was offered for sale by the trustee all persons who, in good faith, and with a capacity to comply with the proposed terms, were present at the time and place, were entitled to



make offers or bids, and the ones proposing to pay the largest and highest sum was entitled to have his bid or offer [35] accepted upon complying with the terms of sale, and reported to the court for confirmation, or such other orders in the cause as to the court should seem proper and in accordance with the interests of the parties, or the estate, and the course and practice of the court”.

“It follows *therefor* that the referee had no right to impose upon Heard, as a condition precedent to opening the bidding that he make an “upset bid” of \$78000. The effect of this order was that Williams & Schmulbach were entitled to take the property at \$75500 unless Heard would pay \$78000 altho he stood ready, willing, and able to comply with his bid of \$75,525. This was manifestly unjust and therefore erroneous”. In re Williams-Coal City House Furnishings Company vs. Hogue 197 Fed. 1.

In the instance now before the court there would have been no extra cost imposed on the Bankrupt Estate had the sale of the property been confirmed to petitioner. However, the courts have *heretofor* clearly set forth their views on the subject of obtaining the maximum return.

“Haag bid \$12000—“an offer to bid \$13000 was filed with the exception to the confirmation of the sale to Haag.” (It actually sold for \$13500——)

“Nevertheless the advance bid (of \$13000) was sufficiently substantial in amount to insure against increased costs and present a reasonable possibility



of securing for the creditors the protection of whose interest is the chief purpose of bankruptcy proceedings, the real value of the bankrupt's property".

*In re Wolke Lead Battery Co.* 294 Fed. 511.

"in a bankruptcy proceeding the chief purpose is to protect the interest of the creditors". *Colter et al Blieden et al In re Morgan Est.* 104 F (2nd) 34.

"The confirmation of this sale should only have been made after a fair hearing and upon proof justifying the conclusion that the [36] properties were being sold for all that could reasonably be obtained for them, that the trustee had acted freely and fairly in making the sale, and that it was for the best interest of all concerned that the same should be consummated". *Curin v Nourse* 66 Fed. (2nd) 137.

There is ample authority to sustain petitioner's position that the Order Confirming the Sale of the Real Property involved herein must be set aside and the offer of petitioner to buy the property for the sum of Two Thousand Three Hundred Twenty Five (\$2325.00) Dollars should be accepted and the sale of the same confirmed to him.

Petitioner was present at the time and place noticed for the sale; he made the highest bid; it was made in good faith and he had the capacity and ability to comply with the terms of sale; he tendered a check for ten percent of the amount of his offer and when objection to the form of the tender was made by the representative of the low

bidder he offered to post at that time the amount of the check in currency and, in fairness and under the authorities, he was entitled to have his higher offer accepted and the sale of the property confirmed to him.

Respectfully submitted

BURR H. PRENTICE

Petitioner

Jacobson v Larkey, 245 Fed. 541

Kimmel v Crocker 72 Fed. 599

Coal City House Furnishings Co. v Hogue  
197 Fed. 1

Wolke Lead Battery Co. 294 Fed. 511

Colter et al Blieden et al In Re Morgan  
Est. 104 Fed. (2nd) 34

Curin vs. Nourse 66 Fed. (2nd) 137

[Endorsed]: Filed Apr. 15, 1943. [37]

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[Title of District Court and Cause.]

PETITIONER'S STATEMENT OF FACTS IN  
LIEU OF REPORTER'S TRANSCRIPT

To Ben E. Tarber, Esq. Referee in Bankruptcy and  
To the above District Court:

Upon the petition for review in bankruptcy proceedings from an order of Referee Ben E. Tarber confirming the sale of certain real property to Baruch Company, a corporation, the following facts are presented by the petitioner.

(1) The bankrupt is a corporation organized under the laws of the State of California to carry on the business of Packing dog food, rendering and soap making.

(2) Among the assets of the bankrupt was a certain parcel of real property located in the City of South Gate, County of Los Angeles, State of California, being a portion of Tract #486 and having an area of 3.44 more or less acres.

(3) That on or about July 20, 1942, an order was made as follows:

In the District Court of the United States for the  
Southern District of California, Central  
Division

In Bankruptcy No. 40689-B

In the Matter of

DR. W. J. ROSS CO., a Corporation,

Bankrupt

### ORDER OF SALE OF REAL PROPERTY [38]

The Trustee herein, L. Boteler, having filed his petition for authority to sell the hereinafter described real estate and the same coming on for hearing this 20 day of July, 1942 after due notice to creditors as required by law, and said petition having been heard and duly considered, on motion of Craig & Weller, counsel for said Trustee, no adverse interests appearing thereat,

It Is Ordered that the Trustee herein be, and he is hereby authorized and directed to sell, at

private sale or at public auction, to the highest and best bidder or bidders therefor, the real property described in said petition, situated in the city of South Gate, County of Los Angeles, State of California, as follows:

That part of Lot "A" of Tract No. 486 as per Map recorded in Book 15 pages 30 and 31 of Maps in the Office of the County Recorder described as follows:

Beginning at the Northeasterly corner of said Lot "A" thence north  $82^{\circ} 45'$  west along the northerly line of said lot, 263.63 feet to the northeasterly corner of the land described in the deed to Southern California Edison Company, recorded in Book 8429, page 270 of Official Records of said County; thence south  $34^{\circ} 46' 40''$  west along the southeasterly line of the land described in said deed 717.7 feet, more or less to a point in the southerly line of said Lot "A"; thence south  $82^{\circ} 34' 40''$  east along said southerly line 247.08 feet to the southeasterly corner of said Lot "A" thence northerly along the southeasterly line of said lot to the point of beginning. Except that portion thereof, if any, now included within the boundaries of Andrews & Massachia Land in Ranchio Santa Gertrudes as per map recorded in Book 12 pages 138 and 139 of maps in the Office of the County Recorder.

Subject to a deed of trust dated October 1, 1940, wherein [39] Title Guarantee & Trust Company, a California corporation, is Trustee and Lydia Bush-

nell, a married woman, is beneficiary. Any sale of said property is to be made subject to the confirmation of this Court.

Dated: July 20th 1942

BEN E. TARVER

(4) That the said sale was advertised in the Los Angeles Daily Journal, a newspaper of general circulation, and that the said advertisement was in words and figures as follows:

Today's Assignees' Sales

Dr. W. J. Ross Co., Bankrupt—Real estate approximately 3.44 acres on Manchester Boulevard, about one mile east of Atlantic Boulevard consisting of Part of Lot "A" of Tract 486 in the City of South Gate, County of Los Angeles, as per map recorded in Book 15, Pages 30 and 31 of Maps in the office of the County Recorder as per metes and bounds description, free and clear, subject to reservations, rights of way and easements of records. Sale Wednesday, March 10, 1943, at 10 o'clock, Court Room Ben E. Tarver, Otis Building, Santa Ana, California, L. Boteler, Trustee, TRinity 1231.

(60240 Mar 5-10

That your petitioner was present in your court room on the 10th day of March, 1943, from the hour of 9:45 A. M. to the hour of 10:25 A. M. and during that time the following transpired:

The Court announced that he was going to sell at auction the piece of real property advertised in the paper.

The Court read a brief description of the property to be sold and then asked if that was sufficient description or would anyone wish to have the entire description read. Your petitioner requested that a portion of the *meets* and bounds description be read "So that we may know for sure we are bidding on the piece of property we have in mind". Whereupon the Court did [40] read a portion of the meets and bounds description of the piece of property to be sold. Whereupon your petitioner remarked "Thats all right we are both talking about the same piece of property".

A Mr. Clemens who was present asked as to the zone the property was in and the Court stated he did not know what zone the property was in. Mr. Clemens then asked the Court what easements were reserved in the deed and the Court read aloud from the file calling attention to the easements. Mr. Clemens then asked the Court if the property was free and clear of all encumbrances and the Court stated that it was.

Your petitioner then asked if the taxes on the property would be prorated to date of recordation of deed. The Court stated he would telephone Mr. Boteler and find out. The Court did telephone and apparently did contact Mr. Boteler and after some conversation stated that taxes would be prorated from the 2nd of March, 1943, to the date of sale.

Your petitioner further asked the Court if the Trustee would provide a Certificate of Title to the property and the Court discussed this (apparently



with Mr. Boteler) on the telephone and then the Court stated that the Trustee would provide a Certificate of Title from the Title Insurance and Trust Company showing the property free and clear.

At this stage of the proceedings the Court stated that a deposit of 10% of the bid would be required and that he had a bid of Twenty Two Hundred Fifty (\$2250.00) Dollars with a deposit of Two Hundred Twenty Five (\$225.00) Dollars. Mr. Clemens then bid Twenty Three Hundred (\$2300.00) Dollars whereupon the Court stated the Trustee did not want to accept any bids for less than ten percent more than the one bid of Twenty Two Hundred Fifty (\$2250.00) Dollars previously had.

A gentleman whose name the petitioner does not know was present in the courtroom during all of the proceedings and at this stage in the proceedings he stated that it was not fair, that "They" had done all the preliminary work on "this" and now somebody from L. A. walks in and overbids them. Your petitioner asked this gentleman if he represents the party who made the first bid of Twenty Two Hundred Fifty (\$2250.00) Dollars and he replied that [41] he did. Whereupon your petitioner stated that this was, he understood, a sale at auction of a piece of property to the highest bidder. Whereupon the Court stated he would again telephone Mr. Boteler. While the Court's secretary was getting the telephone connection through your petitioner bid Twenty Three Hundred Twenty Five (\$2325.00) Dollars and at that time your petitioner tendered a check drawn on a bank



at Bell, California, in the amount of Two Hundred Thirty Three and no/100 (\$233.00) Dollars made payable to "L. Boteler Trustee in Bankruptcy W. J. Ross Co. Bankrupt #40689B Central Division" and endorsed on the voucher attached thereto "In payment of deposit on bid auction \$2325.00 bid", stating to the Court that this check was tendered as the 10% deposit the Court had previously stated would be required.

The gentleman who claimed to represent the first bidder again protested accepting any bid other than his *principle's* bid. Whereupon the Court asked this gentleman if he would raise his bid and was informed that he would not.

After again talking on the phone apparently with Mr. Boteler the Court stated he would not accept any other bid of an amount less than Twenty Four Hundred Seventy Five (\$2475.00) Dollars and that "they" came down here from "L A" and bid as little as Five (\$5.00) Dollars over and expect to get a sale confirmed.

The gentleman who stated he represented the first bidder asked the Court if the check your petitioner had tendered was certified and the Court stated it was not. Your petitioner then asked this gentleman if the check his *principle* had tendered with their bid was certified and he stated it was not and he assumed it had been cashed already and that made it better than your petitioner's check. Your petitioner then stated to the Court that if there was any question of the sufficiency of the

check then tendered that if the Court would consider the petitioner's bid that this petitioner would at that time post a cash deposit in lieu of the check tendered.

Whereupon the Court stated that he would not award the property to this petitioner even if there was a 10% cash deposit posted unless this petitioner's bid was at least Twenty Four Hundred Seventy Five (\$2475.00) Dollars. This [42] amount your petitioner declined to bid, calling attention to the fact that this was a public auction sale of the property and that there had been no mention at the time the terms of sale were announced of any minimum bid that would be acceptable to the Court. Whereupon this petitioner protested the Court's refusal to accept your petitioner's bid of Twenty Three Hundred Twenty Five (\$2325.00) Dollars calling attention to the fact that the acceptance of it would result in Seventy Five (\$75.00) Dollars more in cash being realized for the benefit of the estate.

Whereupon the Court handed to this petitioner the check for Two Hundred Thirty Three (\$233.00) dollars above mentioned and announced the property sold to Baruch Company, incorporated in State of California, for Twenty Two Hundred Fifty

(\$2250.00) Dollars, whereupon your petitioner stated that he protested the said sale.

Respectfully submitted

BURR H. PRENTICE

Petitioner

Dated March 1943

Approved

.....

Referee in Bankruptcy

[Endorsed]: Filed Apr. 15, 1943. [43]

\_\_\_\_\_

[Title of District Court and Cause.]

DEPOSIT TO GUARANTEE TO ESTATE  
BETTER PRICE FOR THE SALE OF  
CERTAIN REAL PROPERTY

To Ben E. Tarber, Referee: L. Boteler, Trustee;  
and To The Above District Court:

Undersigned, B. H. PRENTICE, hereby deposits with you a certified check in the sum of Two Hundred Thirty-three (\$233.00) Dollars, being ten percent of an offer in the sum of Two Thousand Three Hundred Twenty-five (\$2325.00) Dollars which undersigned makes for the purchase of the following described real property of the above bankrupt estate, to-wit:

All of the real property belonging to this bankrupt estate and situated in the City of South Gate, County of Los Angeles, State of California, described as:

That part of Lot "A" of Tract No. 486 as per Map recorded in Book 15, pages 30 and 31 of Maps in the Office of the County Recorder, described as follows:

Beginning at the Northeasterly corner of said Lot "A" thence north  $82^{\circ} 45'$  West along the Northerly line of said Lot, 263.63 feet to the Northeasterly corner of the land described in the deed to Southern California Edison Company, recorded in Book 8429, Page 270 of Official Records of said County; thence South  $34^{\circ} 46' 40''$  West along the Southeasterly line of the land described in said deed 717.7 feet, more or less, to a point in the Southerly line of said Lot "A"; thence South  $82^{\circ} 34' 40''$  East along said Southerly line 247.08 feet to the Southeasterly corner of said Lot "A", thence Northerly along the Southeasterly line of said Lot to the point of beginning. Except that portion thereof, if any, now included within the boundaries of Andrews & Masachia Land in Ranchio Santa Gertrudes as per [44] map recorded in Book 12, Pages 138 and 139 of Maps in the office of the County Recorder.

This deposit is a guarantee to the estate, the Trustee thereof, the Referee, and to the Court, that the Undersigned will purchase said property for the foregoing sum if the Court grants petitioner's prayer to confirm the sale of the above described real property to the undersigned.

BURR H. PRENTICE.

CALIFORNIA BANK MONEY ORDER

No. 454870

B. H. Prentice

Bell, Cal., Mar 29 '43

Purchaser

Pay to the Order of L. Boteler, Trustee in \$233.00  
Bankruptcy & Ben E. Tarber, Referee  
in Bankruptcy

California Bank \$233 and 00 cts

Bell Office — 90 - 1051

California Bank

4476 East Gage Avenue

Bell, California

L. A. Wenzel

Authorized Officer

Money Order Receipt

No. 454870

Detach and Retain

Mar 29 '43

Date Purchased

\$233.00

Amount

California Bank

Memo. [45]

[Endorsed]: Filed Apr. 15, 1943.

State of California

County of Los Angeles—ss.

### AFFIDAVIT OF MAILING

M. Quinn, being first duly sworn, says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles, is over the age of eighteen years, and is not a party to the within entitled action; that affiants residence address is 9212 Hunt Ave., South Gate, Calif., that on the 30th day of March 1943, affiant served the within

1. Points and Authorities in support of Petition to Review Order confirming Sale of Real Estate.

2. Deposit to Guarantee to Estate Better Price for the Sale of Certain Real Property.

3. Petitioners Statement of Facts in Lieu of Reporters Transcript.

4. Copy of Sale of Real Property.

5. Copy of Referees Record of Proceedings.

on the following interested parties in said action by placing true copies thereof in envelopes addressed to, Craig and Weller, Thomas S. Tobin, Attorneys for L. Boteler, Trustee, at their *buisness* address at 817 Board of Trade Bldg., 111 West 7th St., Los Angeles Calif., and to Julius Mackson, Counsel for Baruch Company at his *buisness* address at Commercial Exchange Bldg. 416 West Eighth St., Los Angeles, Calif. and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at South Gate Calif. That there is a delivery service by United States mail at the places so addressed and/or there is a



regular communication by mail between the place of mailing and the places so addressed.

M. QUINN

Subscribed and sworn to before me this 30th day of March, 1943

(Seal) N. FISHER

Notary Public in and for the County of Los Angeles,  
State of California

My Commission Expires Sept 11th 1946

[Endorsed]: Filed Apr. 15, 1943. [46]

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[Title of District Court and Cause.]

NOTICE OF MOTION TO AMEND REFEREE'S  
CERTIFICATE ON REVIEW

To the Honorable Campbell E. Beaumont, Judge of the United States District Court and to the Honorable Ben E. Tarver, Referee in Bankruptcy and to Craig and Weller, Thomas S. Tobin, Counsel for L. Boteler, Trustee and to Julius Mackson, Counsel for Baruch Corporation, you and each of you will please take notice.

That on the 3rd day of May, 1943 Burr H. Prentice, the petitioner herein, intends to and will move the above entitled court to amend the Referee's Certificate on Review as follows:

That on the Referee's Certificate on Review, Page 1 Line 27 there be inserted between the words "property" and the word "and" the following: "and to



offer for sale to the highest and best bidder then present the said property”.

Page 1 Line 28, to delete the words “the successful bidder” substituting in lieu thereof the words “one of the bidders”. That Line 29 be deleted in its entirety, substituting therefor “Burr H. Prentice, representing the Smileage Company and Mr. Clements”.

Page 2 Line 8, that the word “but” be eliminated and that there be inserted between the words “sale” and the word [47] “said” the following, “That Mr. Clements thereupon bid Twenty Three Hundred Dollars (\$2300.00) for the property. Thereupon the Referee”.

Page 2 eliminate Lines 11, 12, 13, 14, and 15 substituting therefor the following “That the Referee asked for higher bids stating that he was going to sell the property at auction and Mr. Clements bid Twenty Three Hundred Dollars (\$2300.00) as stated, and the Referee then having stated he would not consider any bid that was not at least 10% higher than the Twenty Two Hundred Fifty Dollars (\$2250.00) bid. Mr. Prentice then bid Twenty Three Hundred Twenty Five Dollars (\$2325.00) and tendered a check and voucher for”.

Page 2 Line 16 eliminate the word “did”. Eliminate all of Lines 17, 18, 19 and 20 substituting therefor the following, “stated that he would not accept Mr. Prentice’s bid and after having handed the check and voucher to his secretary with instructions that all the information thereon be copied, the Referee returned the check and voucher to Mr.

Prentice with the statement that he would not accept it”.

Page 2 Line 24 the following be added, “That Mr. Baruch stated that ‘they’ had spent considerable time and money in putting this deal over and he wished to object to any other bids being received”.

Such petition will be based on the attached affidavits of T. H. Clements and Burr H. Prentice, and the records and files of said cause.

Respectfully submitted

BURR H. PRENTICE

Petitioner. [48]

State of California

County of Los Angeles—ss.

C. L. Jones being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles that affiant is over the age of eighteen years and is not a party to the within and above entitled action: that affiant’s business address is 4705 Firestone Blvd., South Gate Calif. That on the 29th day of April A. D., 1943, affiant served the within Notice of Motion to ammend Referees Certificate on Review on the Attorneys in said action *in said action* by placing a true copy thereof in an envelope addressed to Julius Mackson and to Craig and Weller, Thomas S. Tobin at the business address of said attorneys, as follows: Julius Mackson, Commercial Bldg. 416 Eighth St., Los Angeles Calif. and to Craig and Weller, Thomas S. Tobin, 817 Board of Trade Bldg., 111 West Sev-

enth St., Los Angeles, Calif. and by then sealing said envelope and depositing the same with postage thereon fully prepaid, in the United State Post Office at South Gate Calif. That there is delivery service by United States mail at the place so addressed.....there is regular communication by mail between the place of mailing and the place so addressed.

C. L. JONES

Subscribed and Sworn to before me this 29th day of April, 1943.

[Seal]

N. FISHER

Notary Public in and for said County and State.

My Commission Expires Sept. 11th 1946. [49]

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[Title of District Court and Cause.]

### AFFIDAVIT OF T. H. CLEMENTS

T. H. Clements, being duly sworn, deposes and says:—That he was present in the office of the Honorable Ben E. Tarver on March 10, 1943 from about 9:40 A. M. to about 10:25 A. M. That at this time this affiant definitely states that he is not now nor has he at any previous time ever been a representative of, or had any connection with, the Smileage Company or the Smileage Company, Ltd., or any partnership or firm having any similar name.

That this affiant upon entering the office of the Honorable Ben E. Tarver at 9:40 A. M. immediately noticed on the large table adjacent to which he

seated himself a signed confirmation of the sale to the Baruch Corporation having a consideration of Twenty Two Hundred Fifty Dollars (\$2250.00) of the property which was advertised to be sold at 10:00 A. M. that day. At about 10:00 A. M. the Referee entered the room and asked, "Are you gentlemen here in connection with the sale of [50] real estate to be held this morning"? To which both this affiant and Mr. Pentice both replied that they were. The Referee then stated he was going to sell the property in question at auction. He then immediately declared a ten minute recess saying he had to go downstairs on some business. In a few minutes he returned and at that time he said, "Gentlemen, I am now offering this property on Firestone Boulevard for sale. I have a written offer of Twenty Two Hundred Fifty Dollars (\$2250.00) for the property. Are you gentlemen familiar with the property?" Mr. Prentice, one of the three bidders present, then asked that the Referee read the legal description of the said property. The Referee read a portion of the *meets* and bounds description and Mr. Prentice said that is O.K. that is the property I have in mind. This affiant then inquired if the property was free and clear, and to what date the taxes would be prorated to, and what zone the property was in, and what right of way reservations were included in the title. The Referee then placed a long distance call for a Mr. Boteler at Los Angeles and after some conversation on the phone said the property would be sold free and clear, that he did not know about the zoning, the taxes would

be prorated to date of deed and that there was a reservation for an irrigation ditch across the front of the property. The Referee then said, "Are there any bids?" This affiant then said, "I will bid Twenty Three Hundred Dollars (\$2300.00)." The Referee said, "I will not accept your bid as it is not 10% more than the offered bid I now have." This affiant then said, "I understood this was an auction in which the property would go to the highest bidder." The Referee then said, "I make a practice in this court to entertain only 10% advances on bids. I do not like the habit of fellows coming down from Los Angeles and raising bids Five Dollars (\$5.00) and upsetting a deal already practically *consumated*." At this point Mr. Prentice said, "I bid Twenty Three Hundred Twenty Five Dollars [51] (\$2325.00) and here is a check for 10% of the bid." And he handed the Court a check for \$233.00. The Referee said he would call Mr. Boteler and see how he feels about this raise of the bid, which he did, and after having established a connection on the phone with Mr. Boteler the Referee stated on the phone what had transpired and that he had declined to accept less than a 10% increase. After completing the phone conversation he stated that Mr. Boteler agreed with him and he would decline to accept any other bid for less than Twenty Four Hundred Seventy-Five Dollars (\$2475.00) At this time this affiant remonstrated to the court the imposing of special terms of sale such as a 10% minimum bid raise after bids have been made. At this point a gentleman who was



there spoke up and told the court that "they" had been to quite a lot of expense in looking up this deal and he did not think any other bids should be entertained. At this time the Referee then asked this man, who this affiant presumes was Mr. Baruch, if he cared to raise his bid, and he was told he did not. The court then asked Mr. Prentice if he cared to raise his bid, and Mr. Prentice replied, "I am the high bidder." And the court said I am not accepting your bid and here is your check back. Mr. Prentice asked that his bid be noted in the minutes. Whereupon the Referee handed the Two Hundred Thirty Three Dollar (\$233.00) check to his secretary and instructed her to make a record of it. The presumed representative of the Baruch Corp. inquired if the check Mr. Prentice had tendered was certified. Mr. Prentice said, "No. Was the check you tendered with your bid certified?" And the answer was, "No, but I presume it has already been cashed so that makes it better than your check." Mr. Prentice then said, "If anyone don't think that check is good and the court will consider my bid I will at this time put up currency in lieu of the check you have there." The Referee said, "I won't accept your cash on that bid as I am not accepting [52] the bid." The court then asked if there were any other bids, and this affiant did not make any further bids, it being the opinion of this affiant that this was a rigged sale and no one other than the Baruch Corporation was going to get the property regardless of what happened. Immediately after leaving the court room both Mr.

Prentice and this affiant made copious notes of what had there transpired, to which notes this affiant has repeatedly referred in preparing this affidavit and the statements made in this affidavit conform to the information as set forth in the said notes.

T. H. CLEMENTS

Subscribed and Sworn to Before Me This 28th Day of April, 1943.

[Seal] ROBERTA A. GAYLORD

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires April 28, 1946. [53]

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[Title of District Court and Cause.]

AFFIDAVIT OF BURR H. PRENTICE IN  
SUPPORT OF PETITION TO AMEND  
REFEREE'S CERTIFICATE ON REVIEW

Burr H. Prentice, being first duly sworn, deposes and says:— That to the best of his knowledge and belief that the statements as set forth on “Petitioners Statement of Facts in Lieu of Reporters Transcript” *heretofor* filed in the above mentioned cause, beginning on Page 3 Line 23 and continuing to Page 6 Line 13 are true and correct.

BURR H. PRENTICE



Subscribed and Sworn to Before Me This 29th  
Day of April, 1943.

N. FISHER

Notary Public in and for the County of Los An-  
geles, State of California.

My Commission Expires Sept. 11th 1946.

[Endorsed]: Filed Apr. 30, 1943. [54]

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[Title of District Court and Cause.]

NOTICE OF HEARING OF PETITION  
FOR REVIEW

To Burr H. Prentice, Petitioner on Review:

You Will Please Take Notice that the under-  
signed Attorneys for the Trustee will bring on for  
hearing before Honorable Campbell E. Beaumont,  
United States District Judge, or such Judge as may  
be calling his Calendar, the Petition for Review of  
the Order of Referee Ben E. Tarver made and en-  
tered March 16, 1943, on Monday, May 3, 1943 at  
the hour of 10 o'clock, A. M., on said date or as soon  
thereafter as counsel can be heard.

Dated: April 21, 1943.

CRAIG & WELLER,

By THOMAS S. TOBIN

Attorneys for Trustee

[Endorsed]: Filed Apr. 22, 1943. [55]

[Title of District Court and Cause.]

ORDER DISMISSING PETITION FOR REVIEW AND AFFIRMING ORDER OF REFEREE

Ben E. Tarver, Referee in Bankruptcy in charge of this proceeding having made and entered an Order on March 16, 1943 confirming the sale of real property situated in the City of Southgate, County of Los Angeles, State of California, and described as follows:

That part of Lot "A" of Tract No. 486, as per Map recorded in Book 15, Pages 30 and 31 of Maps in the office of the County Recorder, described as:

Beginning at the Northeasterly corner of said Lot "A" thence North  $82^{\circ} 45'$  West along the Northerly line of said Lot, 263.63 feet to the Northeasterly corner of the land described in the deed to Southern California Edison Company, recorded in Book 8429, Page 270 of Official Records of said County; thence [56] South  $34^{\circ} 46' 40''$  West along the Southeasterly line of the land described in said deed 717.7 feet, more or less, to a point in the Southerly line of said Lot "A"; thence South  $82^{\circ} 34' 40''$  East along said Southerly line 247.08 feet to the Southeasterly corner of said Lot "A"; thence Northerly along the Southeasterly line of said Lot to the point of beginning. Except that portion thereof, if any, now included within the boundaries of Andrew & Massachia Land

in Ranchio Santa Gertrudes as per Map recorded in Book 12, Pages 138 and 139 of Maps in the office of the County Recorder.

Subject to a Deed of Trust dated October 1, 1940, wherein Title Guarantee & Trust Company, a California corporation, is Trustee and Lydia Bushnell, a married woman, is beneficiary,

to the Baruch Corporation, a California corporation, after a private sale thereof had been negotiated, and a petition for review of said order having been filed by Burr H. Prentice, doing business under the fictitious name of Smileage Co., Ltd., seeking to have said Order reversed and annulled, and the Referee having made his Certificate on Review and filed the same herein, together with certain Exhibits, and said Petition for Review having been noticed for hearing on May 3, 1943, at the hour of 10 o'clock, A. M., on said date before the undersigned Judge of the above court, and the petitioner on review, Burr H. Prentice, having filed a motion to amend the Referee's Certificate on Review, and said matter having duly come on for hearing pursuant to said notice, and the trustee appearing by his Attorneys, Messrs. Craig & Weller, Thomas S. Tobin of counsel, and Burr H. Prentice, petitioner on review, appearing in propria persona, and both parties having announced [57] their readiness to argue and submit the matter, and said matter having been duly argued by counsel, and the Court being fully advised in the premises,

Finds that prior to the entry of the Order com-

plained of the trustee, pursuant to an Order authorizing the sale of the real property, negotiated a private sale to the Baruch Corporation for the sum of \$2250.00 and returned the same to the Referee for confirmation; that the trustee caused to be placed in the Los Angeles Daily Journal, an announcement of the same, which announcement, however, did not state that any sale was to be had of said real property at public auction, nor did the Referee cause such a notice to be inserted in the Daily Journal.

The Court further finds that at the time of the hearing on confirmation of said private sale the Referee announced that no bids would be accepted for less than ten per cent above the sum of \$2250.00 for which the sale of the real property had been negotiated to the Baruch Corporation. That notwithstanding said announcement petitioner on review offered to raise the purchaser's bid by a sum not in excess of \$75.00, or the sum of \$2325.00.

The Court finds that the Referee declined to accept said bid and confirmed the sale to the Baruch Corporation for the sum of \$2250.00.

The Court finds that according to the Referee's certificate it was stated at the hearing by one Baruch representing the successful bidder that the Baruch Corporation, relying on said private sale and the confirmation thereof, in good faith, spent a total of about \$125.00 in surveying the property in question and other expenses, and the Referee found that it would be manifestly unfair, in view of said expenditures, to refuse to confirm said private sale,

unless a substantial increase in bid of at least ten per cent be made at the time of the confirmation thereof.

The Court finds that the Petition for Review was filed on March 29, 1943, more than ten days after the entry of the Order complained of, and that said petitioner on review and his agent [58] knew on the 16th day of March, 1943, that said Order had been entered.

The Court concludes that the confirmation of said sale of real property and the rejection of the bid at the time of confirmation by a third person of less than ten per cent of the original purchase price was, under the circumstances, under the sound judicial discretion of the Referee.

The Court further concludes that this Petition for Review was not filed within the time prescribed by §38-c of the National Bankruptcy Act, and that no extension of time to file said petition for review was obtained.

In Consideration of the foregoing, and on motion of Messrs. Craig & Weller, Attorneys for the Trustee, Thomas S. Tobin of counsel, it is

Ordered that the Petition for Review filed herein by Burr H. Prestice be, and the same hereby is dismissed, and that the Order of Referee Ben E. Tarver entered on March 16, 1943 confirming the sale of the foregoing described real property to the Baruch Corporation for the sum of \$2250.00 be, and the same hereby is affirmed.

Done at Los Angeles, in the Southern District of California, this 7th day of May, 1943.

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United States District Judge.

Disapproved as to form under Rule 8.

B. H. PRENTICE

Petitioner on Review.

Objection noted on attached document. [59]

[Endorsed]: Lodged May 17, 1943.

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[Title of District Court and Cause.]

OBJECTIONS TO "ORDER DISMISSING PETITION FOR REVIEW AND AFFIRMING ORDER OF REFEREE" AS PROPOSED BY COUNSEL FOR TRUSTEE

To the Honorable Paul J. McCormick, Senior Judge of the United States District Court and to Craig and Weller and Thomas S. Tobin, Counsel for L. Boteler and to Julius Mackson, Counsel for Baruch Corporation,

You and Each of You Will Please Take Notice,

That Burr H. Prentice, the petitioner herein, disapproves of the form of the "Order Dismissing Petition for Review and Affirming Order of Referee" as prepared by Counsel for the Trustee, in the following particulars, to-wit:

Objects to the word "Ltd." being included in Line 21 Page 2 and moves that the same be deleted.

Objects to Lines 23 to Line 29 inclusive on Page 3 and moves that the same be deleted on the grounds



that there was no evidence before the Court to substantiate the statement therein [60] contained.

Objects to the paragraph Lines 7 to 10 inclusive on Page 4 and moves that the following be substituted therefor,

“The Court finds that the Petitioner did not file a petition for review within ten days of the date of filing of the Order Confirming Sale by the Referee and finds that the Petitioner moved for and obtained an order of the above entitled Court whereby the time to file such Petition for Review was extended to March 29th, 1943. Furthermore that there was ample justification as well as ample authority for the granting of such extension of time. Furthermore that the said Petition to Review was filed with the Referee prior to March 29, 1943.”

Objects to the paragraph contained within Lines 14 to 19 inclusive on Page 4 and moves to substitute therefor the following,

“Ordered that the action of Referee Ben E. Tarver in confirming sale of the foregoing described property to the Baruch Corporation for the sum of \$2250.00 be, and the same is hereby affirmed.”

Respectfully submitted,

BURR H. PRENTICE,

Petitioner in pro per. [61]

State of California,

County of Los Angeles—ss:

M. Quinn, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles, that affiant is over

the age of eighteen years and is not a party to the within and above entitled action: that affiant's residence is 9212 Hunt Ave., South Gate, Calif. That on the 8th day of May, A. D., 1943, affiant served the within Objections to Order Dismissing Petition for Review and affirming order of Referee as proposed by counsel for trustee on the defendants in said action, by placing true copies thereof in envelopes addressed to their attorneys at the business addresses of said attorneys as follows: Craig and Weller and Thomas S. Tobin, 817 Board of Trade Bldg., 111 W. 7th St., Los Angeles; and Julius Mackson, Commercial Exchange Bldg., 416 W. 8th Street, Los Angeles, California, and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at South Gate, California. That there is delivery service by United States mail at the place so addressed and/or there is a regular communication by mail between the place of mailing and the place so addressed.

M. QUINN.

Subscribed and Sworn to before me this 8th day of May, 1943.

[Seal]

N. FISHER,

Notary Public in and for said County and State.

[Endorsed]: Lodged May 17, 1943. [62]

In the District Court of the United States, Southern District of California, Central Division.

In Bankruptcy No. 40,689-B

In the Matter of

DR. W. J. ROSS COMPANY, a Corporation,  
Bankrupt.

ORDER CONFIRMING ORDER OF REFEREE

Ben E. Tarver, Referee in Bankruptcy in charge of this proceeding, having made and entered an Order on March 16, 1943 confirming the sale of real property situated in the City of South Gate, County of Los Angeles, State of California, and described as follows:

That part of Lot "A" of Tract No. 486, as per Map recorded in Book 15, Pages 30 and 31, of Maps in the office of the County Recorder, described as:

Beginning at the Northeasterly corner of said Lot "A" thence North  $82^{\circ}45'$  West along the Northerly line of said Lot, 263.63 feet to the Northeasterly corner of the land described in the deed to Southern California Edison Company, recorded in Book 8429, Page 270 of Official [63] Records of said County; thence South  $34^{\circ}46'40''$  West along the Southeasterly line of the land described in said deed 717.7 feet, more or less, to a point in the southerly line of said Lot "A"; thence South  $82^{\circ}34'40''$  East along said Southerly line 247.08 feet to the Southeasterly corner of said lot "A"; thence Northerly along the Southeasterly line of said Lot to the point of beginning. Except that portion thereof, if any, now included within the boundaries of Andrew & Mas-

sachia Land in Rancho Santa Gertrudes as per Map recorded in Book 12, Pages 138 and 139 of Maps in the office of the County Recorder.

Subject to a Deed of Trust dated October 1, 1940, wherein Title Guarantee & Trust Company, a California corporation, is Trustee and Lydia Bushnell, a married woman, is beneficiary,

to the Baruch Corporation, a California corporation, after a private sale thereof had been negotiated, and a petition for review of said Order having been filed by Burr H. Prentice, doing business under the fictitious name of Smileage Co., Ltd., asking to have said Order reversed and annulled, and the Referee having made his Certificate on Review and filed the same herein, together with certain Exhibits, and said Petition for Review having been noticed for hearing on May 3, 1943, at the hour of 10 o'clock A. M., on said date before the undersigned Judge of the above Court, and the petitioner on review, Burr H. Prentice, having filed a motion to amend the Referee's Certificate on Review, and said matter having duly come on for hearing pursuant to said notice, and the Trustee appearing by his Attorneys, Messrs. Craig & Weller, Thomas S. Tobin of counsel, and Burr H. Prentice, petitioner on review, [64] appearing in propria personam, and both parties having announced their readiness to argue and submit the matter, and said matter having been duly argued by counsel, and the Court being fully advised in the premises;

Finds that prior to the entry of the Order complained of the Trustee, pursuant to an Order au-

thorizing the sale of the real property, negotiated a private sale to the Baruch Corporation for the sum of \$2250.00 and returned the same to the Referee for confirmation; that the Trustee caused to be placed in the Los Angeles Daily Journal, an announcement of the same, which announcement, however, did not state that any sale was to be had of said real property at public auction, nor did the Referee cause such a notice to be inserted in the Daily Journal.

The Court further finds that at the time of the hearing on confirmation of said private sale the Referee announced that no bids would be accepted for less than ten percent above the sum of \$2250.00 for which the sale of the real property had been negotiated to the Baruch Corporation. That notwithstanding said announcement petitioner on review offered to raise the purchaser's bid by a sum not in excess of \$75.00 or the sum of \$2325.00.

The Court finds that the Referee declined to accept said bid and confirmed the sale to the Baruch Corporation for the sum of \$2250.00.

The Court finds that according to the Referee's Certificate, it was stated at the hearing by one, Baruch, representing the successful bidder, that the Baruch Corporation, relying on said private sale and the confirmation thereof, in good faith spent a total of about \$125.00 in surveying the property in question and other expenses, and the Referee found that it would be manifestly unfair in view of said expenditures to refuse to confirm said private sale unless a substantial increase in the bid of at least



ten (10%) per cent be made at the time of the confirmation thereof. [65]

The Court finds that the Petition for Review was filed on March 29, 1943, more than ten days after the entry of the Order complained of, and that said petitioner on review and his agent knew on the 16th day of March, 1943, that said Order had been entered.

The Court concludes that the confirmation of said sale of real property and the rejection of the bid at the time of confirmation by a third person of less than ten percent of the original purchase price was, under the circumstances, under the sound judicial discretion of the Referee.

The Court further concludes that this Petition for Review was not filed within the time prescribed by Section 39-c of the National Bankruptcy Act, and that on April 24, 1943 the undersigned Judge of the above named Court made an Order extending petitioner's time to review to March 31, 1943 without prejudice to the assertion by any party of any applicable rights and that said Petition for Review was filed prior to March 31, 1943.

In Consideration of the foregoing, and on motion of Messrs. Craig & Miller, Attorneys for the Trustee, Thomas S. Tobin of counsel, it is

Ordered that the Order of Referee Ben E. Tarver entered on March 16, 1943 confirming the sale of the foregoing described real property to the Baruch Corporation for the sum of \$2,250.00 be, and the same hereby is confirmed.



Done at Los Angeles, in the Southern District of California, this 13th day of May, 1943.

PAUL J. McCORMICK,

United States District Judge.

Judgment entered May 13, 1943; Docketed May 13, 1943, Book 3, Page 338; Edmund L. Smith, Clerk, by B. B. Hansen, Deputy. Notation made in Bankruptcy Docket on May 13, 1943, pursuant to Rule 79(a), Civil Rules of Procedure; Edmund L. Smith, Clerk, U. S. District Court, Southern District of California, by B. B. Hansen, Deputy.

[Endorsed]: Filed May 13, 1943. [66]

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[Title of District Court and Cause.]

### NOTICE OF ENTRY OF ORDER

To: Burr H. Prentice, 4705 Firestone Boulevard,  
Southgate, California.

Please Take Notice that on the 13th day of May, 1943, Hon. Paul J. McCormick, United States District Judge, made and entered an Order Confirming Order of Referee Ben E. Tarver, dated June 16, 1943, on review. A full, true and correct copy is hereto attached and herein served upon you.

Dated: May 13, 1943.

CRAIG and WELLER,

By THOMAS S. TOBIN.

[Endorsed]: Filed Jul 19, 1943. [67]

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

State of California,

County of Los Angeles—ss:

M. Criscione, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States over the age of eighteen years and not a party to the above-entitled matter, or interested therein.

That on the 13th day of May, 1943, she deposited a copy of Notice of Entry of Order in an envelope addressed to the following, to wit:

Mr. Burr H. Prentice  
4705 Firestone Boulevard  
Southgate, California

And after carefully sealing said envelope so containing said copy as aforesaid, and after affixing thereon the postage required by law, she deposited said envelope in the United States Post Office at Los Angeles, California; that there is a regular communication by mail from said Post Office of deposit to the place so addressed.

M. CRISCIONE.

Subscribed and Sworn to before me this 13th day of May, 1943.

OLIVE DIFFENDERFER,  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Jul 19, 1943. [68]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To L. Boteler, Trustee in Bankruptcy in the above entitled proceeding, and to Baruch Corporation, a California Corporation, and to their attorney, Julius Mackson, and to the Clerk of the above entitled Court:

B. H. Prentice, the petitioner in the matter of that certain Petition to Review Referee's Order in connection with the Referee's confirmation of sale under date of March 16, 1943 of certain real property situated in the City of South Gate, County of Los Angeles, State of California, feeling aggrieved by the Order of Referee Ben E. Tarver entered March 16, 1943, confirming the sale of certain real property and by the findings decrees and orders of the Honorable Paul J. McCormick, United States District Judge, made and entered respectively on the seventh and thirteenth days of May, 1943, in connection with Petition to Review Referee's Order, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to Rule 73, subdivision (a) and (b) of the Federal Rules of Civil Procedure.

Your petitioner prays that the proper record on appeal, as provided in Rule 75 of the Federal Rules of Civil Procedure be docketed, and that this [69]

appeal be heard and determined as provided by law.

Dated this 11th day of June, 1943.

B. H. PRENTICE,

Petitioner in Propria Persona.

Names and Addresses of Attorneys

For Appellant:

B. H. Prentice, in Propria Persona  
4705 Firestone Blvd.  
South Gate, California

For Appellee:

Messrs. Craig and Weller, Thomas S. Tobin, Es-  
quires,  
817 Board of Trade Building  
117 West 7th Street  
Los Angeles, California  
  
Julius Mackson, Esquire,  
416 West 8th Street  
Los Angeles, California

6-12-43 Mailed copies to above named attorneys  
for appellee.—TH.

[Endorsed]: Filed June 12, 1943. [70]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Royal Indemnity Company.

[Insignia]

Head Office: New York

A New York Corporation.

A Stock Company

Bond No. S 197597

Whereas, B. H. Prentice, as Principal, has taken or is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an Order of Referee Ben E. Tarver entered the 16th day of March, 1943, and from the findings decrees and orders of the Honorable Paul J. McCormick, United States District Judge, made and entered respectively on the 7th and 13th days of May, 1943, in above cause.

Now, Therefore, in consideration of the premises and of such appeal, the Royal Indemnity Company, a corporation organized under the laws of the State of New York, and licensed to transact a general surety business in the State of California, as Surety, does hereby undertake and acknowledge itself bound in the sum of Two Hundred Fifty and no/100 Dollars (\$250.00), that the above named appellants will prosecute their said appeal to effect and answer all damages and costs which may adjudge against them if they fail to make good their appeal.

In Witness Whereof, said Royal Indemnity Company has caused this obligation *to signed* by its

Attorney-in-Fact at Los Angeles, California, and its corporate seal *to hereinto* affixed, this 12th day of June, 1943.

ROYAL INDEMNITY  
COMPANY,

By E. L. COLE,  
Attorney-in-Fact

[Illegible] mined and recommended for approval as  
Provided in Rule 13,

HAROLD L. WATT

Attorney

[Illegible] hereby approve the foregoing bond this  
.....day of June, 1943

.....

United States District Judge.

[Illegible] e premium for this bond is \$10.00 per  
annum.

State of California,  
County of Los Angeles,—ss.

On this 12th day of June in the year 1943, before me, S. P. Gage, a Notary Public in and for the County and State aforesaid, personally appeared E. L. Cole known to be to be the person whose name is subscribed to the within instrument and known to me to be the Attorney-in-Fact of Royal Indemnity Company and acknowledged to me that he subscribed the name of the said Company thereto as principal, and his own name as Attorney-in-Fact.

S. P. GAGE

Notary Public in and for said County and State.

My commission expires July 1, 1945.

[Endorsed]: Filed June 12, 1943. [71]



[Title of District Court and Cause.]

## APPELLANT'S STATEMENT OF POINTS

Pursuant to the Rules of Practice of the Court this Appellant B. H. Prentice does herein present the points upon which he relies in his appeal.

### I.

It was error and an abuse of discretion for the Court to confirm the sale of the subject real property to the Baruch Company when Prentice at the time of the sale offered Seventy Five (\$75.00) Dollars more for the property all other conditions of the two offers being equal.

### II.

It was error for the Court to consider the statement made at the sale by the representative of the Baruch Company that they had spent about One Hundred Twenty-five Dollars anticipating that the sale of the property would be confirmed to them.

### III.

It was an abuse of discretion for the Court to demand after the sale had commenced and the bid of Baruch and the bid of Clements had been received to then demand that Prentice would have to bid an amount equal to [72] 10% more than the Baruch bid.

### IV.

It was an abuse of discretion for the Court to demand that Prentice bid a minimum of Twenty Four Hundred Seventy Five (\$2475.00) Dollars.

## V.

It was an abuse of discretion for the Court to refuse to consider the Prentice bid on the grounds that it was not in a sum equal to 10% more than the Baruch bid.

## VI.

It was error and an abuse of discretion for the District Court to consider the statement contained in the Referee's Record to the effect that the Baruch Company representative claimed to have spent about One Hundred Twenty Five Dollars surveying the property *ect.*

## VII.

It was error and an abuse of discretion for the District Court to confirm the order of Referee Ben E. Tarver entered on March 16, 1943, confirming the sale of the subject property to the Baruch Company.

Respectfully submitted

B. H. PRENTICE

Appellant in Propria Persona

[Endorsed]: Filed Jun 25, 1943. [73]

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL

To The Clerk of the Above Entitled Court:

Pursuant to the rules of practice of the Court, this appellant, B. H. Prentice, does hereby design-

nate the following documents, orders, judgments and records, in the proceedings to be contained in the record on appeal in the above entitled cause, said documents being as follows:

1. Order of Sale of Real Property—Dated July 20, 1942 and referring to “That part of Lot ‘A’ of Tract #486, etc.”

2. Return of Sale of Real Property—Including affidavit of L. Boteler attached thereto,—Filed 2/26/43.

3. Petition to Review Referee’s Order—Including Exhibit “A” thereto attached.

4. Affidavit of Mailing Petition to Review Referee’s Order.

5. Petitioner’s Statement of Facts in Lieu of Reporter’s Transcript.

6. Excerpt from Referee’s Record of Proceedings commencing at the date line 3/10/43 to and including 3/16/43. [74]

7. Petitioner’s Points and Authorities in support of Petition to Review Order Confirming Sale of Real Property.

8. Petitioner’s Deposit to Guarantee to Estate Better Price for the Sale of Certain Real Property together with a photostat of Cashier’s Check attached thereto.

9. Affidavit of Mailing.

(1) Points and Authorities in Support of Petition to Review Order Confirming Sale of Real Estate,

(2) Deposit to Guarantee to Estate Better Price for the Sale of Certain Real Property,

(3) Petitioner's Statement of Facts in Lieu of Reporter's Transcript.

(4) Copy of Sale of Real Property.

(5) Copy of Referee's Record of Proceedings.

10. Referee's Certificate on Review.

11. Notice of Motion to Amend Referee's Certificate on Review including Affidavit of T. H. Clements and Affidavit of Burr H. Prentice in Support of Petition to Amend Referee's Certificate on Review attached thereto.

12. Affidavit of Mailing Notice of Motion to Amend Referee's Certificate on Review.

13. Notice of Hearing of Petition for Review dated April 21, 1943.

14. Order Dismissing Petition for Review and Affirming Order of Referee Done at Los Angeles the 7th day of May, 1943.

15. Objections to "Order Dismissing Petition for Review and Affirming Order *or* Referee as Proposed by Counsel for Trustee."

16. Affidavit of Mailing objection to "Order Dismissing Petition for Review and Affirming Order of Referee" as Proposed by Counsel for Trustee.

17. Order Confirming Order of Referee Done at Los Angeles the 13th day of May, 1943.

18. Notice of Entry of Order.

19. Affidavit of Mailing Notice of Entry of Order.

20. Notice of Appeal—Dated June 11, 1943.

21. Names and Addresses of Attorneys. [75]

22. Appellant's Proposed Statement of the

Points on Which He Intends to Rely on the Appeal.

23. Designation of Contents of Record on Appeal.

24. Affidavit of Mailing:

(1) Appellant's Proposed Statement on the Points on Which He Intends to Rely on Appeal.

(2) Designation of Contents of Record on Appeal.

25. Certificate of Clerk.

Dated this 21st day of June, 1943.

B. H. PRENTICE,

Appellant

In Propria Persona.

[Endorsed]: Filed Jun 25, 1943. [76]

### AFFIDAVIT OF MAILING

State of California,

County of Los Angeles,—ss.

M. Quinn, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles, that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's residence address is 9212 Hunt Ave. South Gate, Calif. That on the 29 day of June, 1943, affiant served the within Designation of Contents of Record on Appeal and Appellant's Statement of Points on Counsels for interested parties to-wit: Craig & Weller and Thomas S. Tobin Counsel for

L. Boteler, Trustee, at their office address at 817 Board of Trade Bldg., 111 W. 7th St. Los Angeles, and on Julius Mackson, Counsel for Baruch Company at his office address Commercial Exchange Bldg., 416 W. 8th St. Los Angeles, by placing true copies of the two above described documents in envelopes addressed to the several attorneys *at* above set forth at the office addresses as above set forth and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at South Gate, California, and that there is delivery service by United States mail at the places so addressed and/or there is a regular communication by mail between the place of mailing and the places so addressed.

M. QUINN,

Subscribed and Sworn to before me this 24th day of June, 1943.

[Seal]

N. FISHER

Notary Public in and for said County and State.

My Commission Expires Sept. 11th, 1946.

[Endorsed]: Filed Jun 25, 1943. [77]

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[Title of District Court and Cause.]

COUNTER DESIGNATION OF PARTS OF  
RECORD ON APPEAL

The Appellant not having designated portions of the record on appeal sufficient to affirmatively show the jurisdiction of the court, and the qualification



of the trustee, the undersigned Appellee hereby designates and requests that the following parts of the record be incorporated and printed in the record on appeal:

1. Original Petition in proceedings under Chapter XI;
2. Approval of Debtor's Petition and Order of Reference under Section 322 of the Bankruptcy Act;
3. Bankrupt's Schedule B(1)—Real Estate;
4. Order of Adjudication;
5. Trustee's Bond and approval endorsed thereon;
6. Appeal Bond;
7. This Counter Designation and Affidavit of Service by Mail of same.

Dated: At Los Angeles, in the Southern District of California [78] this 25th day of June, 1943.

CRAIG & WELLER

By THOMAS S. TOBIN

and

THOMAS S. TOBIN

Attorneys for Appellee L.  
Boteler, Trustee in Bank-  
ruptcy.

[Endorsed]: Filed June 26, 1943. [79]

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 79 inclusive contain full, true and correct copies of: Original Petition in Proceedings Under Chapter XI; Approval of Debtor's Petition and Order of Reference under Section 322 of the Bankruptcy Act; Schedule B-1; Order of Adjudication; Bond of Trustee; Referee's Certificate on Review; Order of Sale of Real Property; Return of Sale of Real Property; Referee's Order; Order Confirming Sale of Real Property; Points and Authorities in Support of Petition to Review Order Confirming Sale of Real Property; Petitioner's Statement of Facts in Lieu of Reporter's Transcript; Deposit to Guarantee to Estate Better Price for the Sale of Certain Real Property; Affidavit of Mailing; Notice of Motion to Amend Referee's Certificate on Review; Affidavit of T. H. Clements; Affidavit of Burr H. Prentice in Support of Petition to Amend Referee's Certificate on Review; Notice of Hearing of Petition for Review; Order Dismissing Petition for Review and Affirming Order of Referee (Not signed); Objections to "Order Dismissing Petition for Review and Affirming Order of Referee" as Proposed by Counsel for Trustee; Order Confirming Order of Referee; Notice of Entry of Order; Affidavit of Mailing; Notice of Appeal; Cost Bond on Appeal; Appel-

lant's Statement of Points; Designation of Contents of Record on Appeal; and Counter-Designation of Parts of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to \$19.20 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 19 day of July, 1943.

[Seal]                      EDMUND L. SMITH,  
Clerk.

By THEODORE HOCKE,  
Deputy Clerk.

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[Endorsed]: No. 10497. United States Circuit Court of Appeals for the Ninth Circuit. B. H. Prentice, Appellant, vs. L. Boteler, Trustee in Bankruptcy of the Estate of Dr. W. J. Ross Company, a Corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 21, 1943.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals  
For the *North* Circuit

No. 10497

B. H. PRENTICE,

Appellant.

vs.

L. BOTELER, Trustee in Bankruptcy of the Es-  
tate of

DR. W. J. ROSS COMPANY, Bankrupt,  
Appellee.

APPELLANTS STATEMENT OF THE POINTS  
ON WHICH HE INTENDS TO RELY ON  
THE APPEAL AND DESIGNATION OF  
RECORD

B. H. Prentice, the Appellant herein, hereby adopts his previous designation of the points on which he intends to rely on appeal, heretofore filed with the Clerk of the United States District Court, and certified by the Clerk of the Court, entitled

“Appellant’s Statement of the Points on Which He Intends to Rely on the Appeal.”

That Appellant further designates the entire certified record and transcript certified to you by the Clerk of the United States District Court as the record to be printed and to constitute the record in connection with this appeal.

Dated: July 22, 1943.

B. H. PRENTICE,

Appellant

In Propria Persona.

Received copy of the within document this 27 day  
of July 1942.

CRAIG & WELLER,

Attorney for Respondent L.  
Boteler.

JULIUS MACKSON,

Appellant

In Propria Persona.

[Endorsed]: Filed Jul 29 1943. Paul P. O'Brien,  
Clerk.

